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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/296,835	04/22/1999	RONALD A. WEIMER	M4065.0319/P319	8895

24998 7590 05/17/2004

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L STREET NW
WASHINGTON, DC 20037-1526

EXAMINER

KIELIN, ERIK J

ART UNIT PAPER NUMBER

2813

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20040514

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Commissioner for Patents

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 22 March 2004 has been entered.

Response to Amendment

2. The reply filed on 22 March 2004 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): (See 37 CFR 1.111.)

Newly submitted claims 2-5, 8, 10-12, 42-45 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

In the restriction requirement filed 1 May 2003, the claims were restricted between two method species, I, silicon oxynitride, and II, high dielectric constant oxides with a dielectric constant greater than about 25. In Applicant's response filed 30 May 2003, Applicant elected the invention of Group II. In the response filed 22 March 2004, Applicant has removed the elected limitation (i.e. that the oxygen deficient dielectric have a "a dielectric constant of at least 25") from the claims. This amounts to claiming yet a third species. This species is non-elected and will **not** be examined.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution

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on the merits. Accordingly, claims 2-5, 8, 10-12, 42-45 are withdrawn from consideration as being directed to a non-elected invention, **thereby leaving no active claims**. See 37 CFR 1.142(b) and MPEP § 821.03.

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

In the interest of customer service, Applicant is given the opportunity to amend the claims within the elected species. **Should Applicant fail to amend the claims within the elected species, there will be a holding of intentionally non-responsive amendment.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erik Kielin whose telephone number is 571-272-1693. The examiner can normally be reached on 9:00 - 19:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead, Jr. can be reached on 571-272-1702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Erik Kielin
Primary Examiner
14 May 2004